

REMARKS

The Official Action mailed July 24, 2009, has been received and its contents carefully noted. This response is filed within three months of the mailing date of the Official Action and therefore is believed to be timely without extension of time. Accordingly, the Applicant respectfully submits that this response is being timely filed.

The Applicant notes with appreciation the consideration of the Information Disclosure Statements filed on March 24, 2006; April 21, 2006; and May 21, 2007.

Claims 1-4, 17-20 and 22-25 are pending in the present application, of which claims 1, 2 and 17 are independent. Claims 1, 2 and 17 have been amended to better recite the features of the present invention. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested.

The Official Action objects to claims 18 and 22 under 37 CFR § 1.75(c) asserting that "[t]hese claims essentially comprise descriptive recitations related to intended use and they fail to further limit the claimed apparatus" (page 2, Paper No. 20090709). The Applicant respectfully disagrees and traverses the assertions in the Official Action. Contrary to the assertions in the Official Action, claims 18 and 22 do not merely recite "descriptive recitations related to intended use." Claim 18 recites "wherein if it is discriminated that the time information is added to said input content data, and identified time information and the present time clocked by said clocking means are unmatched within a predetermined range, said control means operates to prohibit the input content data from being recorded in said recording medium," and claim 22 recites "wherein said control means operates to add information representing the insistence of the copyright as digital watermark information to the input content data" (emphasis added). The Applicant respectfully submits that at least the portions of claims 18 and 22 that are underlined above further limit the claimed apparatus. Also, to the extent that claims 18 and 22 are considered to include functional recitations, the Examiner is reminded that "[t]here is nothing inherently wrong with defining some part of an invention in functional

terms," that "[f]unctional language does not, in and of itself, render a claim improper" and that "[a] functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used" (MPEP § 2173.05(g)). The Applicant respectfully submits that dependent claims 18 and 22 further limit the claimed apparatus, and fairly convey to a person of ordinary skill in the pertinent art that the control means must include additional functions beyond that which is recited in the respective independent claims. Accordingly, reconsideration and withdrawal of the objections under 37 CFR § 1.75(c) are in order and respectfully requested.

The Official Action rejects claims 1-4, 17-20 and 22-25 as anticipated by U.S. Patent No. 6,310,956 to Morito. The Applicant respectfully submits that an anticipation rejection cannot be maintained against the independent claims of the present application, as amended.

As stated in MPEP § 2131, to establish an anticipation rejection, each and every element as set forth in the claim must be described either expressly or inherently in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Independent claims 1, 2 and 17 have been amended so as to concretely define the type of information of the digital watermark information. The present invention is unique in using two kinds of digital watermark information. Specifically, independent claims 1 and 2 have been amended to recite identifying whether broadcast content data is package media data or distribution data and identifying whether the broadcast content data is recorded in a disk or a semiconductor memory. Independent claim 17 has been similarly amended except that claim 17 recites "input content data" instead of "broadcast content data." These features are supported in the present specification, for example, by the disclosure at page 3, line 26, to page 4, line 16, which describes problems in the prior art, solutions to these problems, and objectives of the present invention.

That is, if the content is downloaded from the home page employing the Internet, a large number of illegal copies are inundated, so that the content business is not set up.

The reason why illegal copy can not be prevented in the current circumstances is that the content data recorded through the network and the content data of one generation recorded in a reproduction device by the person as conventionally allowed can not be distinguished. That is, if the network distribution is prevented, the normal recording by the person ought to be also prohibited.

...

It is an object of the present invention to provide a service environment of content data as copyright holder's intention by detecting the first generation recorded data based on the information, and detecting the content distributed via a network, which was impossible before, and by preventing the content data from being illegally recorded or distributed.

The Applicant respectfully submits that Morito does not teach the above-referenced features of the present invention, either explicitly or inherently.

Since Morito does not teach all the elements of the independent claims, either explicitly or inherently, an anticipation rejection cannot be maintained. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 102 are in order and respectfully requested.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized to charge fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(a), 1.20(b), 1.20(c) and 1.20(d) (except the Issue Fee) which may be required now or hereafter, or credit any overpayment to Deposit Account No. 50-2280.

Respectfully submitted,



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